No. 08-21-00229-CV

IN THE COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

IN RE PETER ARTHUR FIERRO
a/k/a ART FIERRO,
Relator.

REPLY TO DORA OAXACA AND CLAUDIA ORDAZ-PEREZ'S RESPONSE IN OPPOSITION TO RELATOR'S PETITION FOR WRIT OF MANDAMUS

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RELATOR REQUESTS ORAL ARGUMENT AND EMERGENCY RELIEF

IDENTITY OF PARTIES AND COUNSEL

Pursuant to Texas Rule of Appellate Procedure 52.4(a) and 52.5, Relator does not dispute the Identity of the Parties and Counsel as provided by Respondent.

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REPLY ARGUMENT

Rendering Texas Election Code § 141.001(a) inapplicable to offices with qualifications created through the Texas Constitution eliminates additional statutory requirements currently utilized in determining eligibility for these constitutionally created offices.

Respondent[1] asserts in her Response in Opposition to Relator's Petition for Writ of Mandamus that candidates for the office of State Representative are not subject to the eligibility requirements of Texas Election Code § 141.001 [Tab 1] because the Texas Constitution prescribes exclusive eligibility requirements for this office. [Respondent's Resp. at p. 16][2]. Respondent cites *Luna v. Blanton*, wherein the Texas Supreme Court held that the statutory qualifications of Article 1.05 of the Texas Election Code—the precursor of Texas Election Code § 141.001 [Tab 1]—did not apply to the candidate at issue in that case. [Respondent's Resp. at p. 16–17] (citing *Luna v. Blanton*, 478 S.W.2d 76 (Tex. 1972)). Specifically, Respondent cites the following from the Court's opinion: "'where the Constitution prescribes the qualifications for holding a particular office, it is beyond the power of the Legislature to change **or add** to these qualifications unless the Constitution gives that power.'" [Respondent's Resp. at p. 17–18] (emphasis added). Further, Respondent asserts that

[1] Real Party of Interest, Claudia Ordaz-Perez filed a *pro se* Response to Relator's Petition for Writ of Mandamus enjoining and adopting Respondent's Response in Opposition to Relator's Petition for Writ of Mandamus.

[2] Relator will cite the Respondent's Response in Opposition to Relator's Petition for Writ of Mandamus filed on January 4, 2022 as follows: "[Respondent Resp. at [X]]," with "X" as the page number. Items in the Appendix to Relator's Reply are cited as "[Tab (Number].

"a statute which 'seeks to impose an additional test of eligibility, other than what is prescribed by the Constitution' is void." [Respondent's Resp. at p. 18] (citing *Burroughs v. Lyles*, 181 S.W.2d 570 (Tex. 1944) (orig. proceeding)).

Section 141.001 [Tab 1] prescribes certain eligibility requirements for a public elective office: a candidate must not have been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote; and, must not have been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities. Texas Election Code § 141.001(a) [Tab 1]. These requirements are not encapsulated in the Texas Constitution's eligibility requirements for a State Representative—yet, these eligibility requirements are imposed on any candidate running for an elective office in the State of Texas, including that of a candidate for State Representative. Yet, how is this possible, if Texas Election Code § 141.001(a) [Tab 1] is inapplicable to a candidate for State Representative? These requirements impose an additional test of eligibility other than what is prescribed by the Constitution and should, therefore, be void. Or, otherwise, if § 141.001(a) [Tab 1] is deemed to be inapplicable to such candidates, wherein does the interest of constituents lie if those that have been deemed mentally incapacitated or finally convicted of a felony are allowed to serve in the capacity of State Representative of a district?

Some may argue that the Texas Constitution does provide prohibitions to exclude individuals from office who have been convicted of felonious crimes; however, the language of the Constitution states "[l]aws shall be made to exclude from the office persons who have been convicted of **bribery, forgery, or other high crimes**." Texas Constitution Article. XVI, § 2 (emphasis added). [Tab 2]. The Constitution does not define "other high crimes"[3] and does not specifically state that those convicted of felonies in particular are excluded from eligibility for candidacy for elective office. The same can be said for those who have been deemed by a probate court to be mentally incapacitated.

If the Legislature does not have the power to change or add to the candidate

[3] While it is not the United States Constitution that is being specifically referenced here, the Texas Constitution was modeled after the United States Constitution, which similarly does not specifically define "high crimes." *See* Joe E. Ericson, *Constitution of the Republic of Texas*, TEXAS STATE HISTORICAL ASSOCIATION HANDBOOK OF TEXAS, Feb. 25, 2016), http://tshaonline.org/handbook/entries/constitution-of-the-republic-of-texas. [Tab 3]. And while there is much debate, even at the national level, pertaining to the meaning of "high crimes and misdemeanors" within the United States Constitution, past practice seems to indicate that "high crimes" does not necessarily mean an actual crime; instead, it is about a serious abuse of power—an abuse or violation of some public trust. *See* Madeleine Carlisle, *What Are High Crimes and Misdemeanors? Here's the History*, TIME (Jan. 17, 2020, 9:22 AM), http://time.com/5745616/high-crimes-and-misdemeanors [Tab 4]; *see also* "High crime," *Merriam-Webster.com Legal Dictionary*, MERRIAM-WEBSTER, https://www.merriam-webster.com/legal/high%20crime (Accessed 6 Jan. 2022) [Tab 5] (defining "high crime" as "a crime of infamous nature contrary to public morality but not technically constituting a felony"). As such, if as Respondent argues, Texas Election Code § 141.001(a) Tab 1] is inapplicable to candidates for State Representative, it still remains that those convicted of felonies are not specifically barred by the Texas Constitution alone from eligibility for elected office and can therefore theoretically submit themselves for candidacy for this elected position. And while the Court in *Welch v. State ex rel. Long* assumed that "high crimes" suggested reference to felonies, this was merely an interpretation by one Court and there has been no final adjudication or determination that "high crimes" indeed refers to felonies. *See Welch v. State ex rel. Long*, 880 S.W.2d 79, 82 (Tex. App.—Tyler 1994, writ denied).

eligibility qualifications for State Representative, how then can these requirements be imposed upon candidates? These qualifications are creations of the Legislature, not of the Constitution. How then does one reconcile the application of these requirements to candidates, but not the remaining requirements laid out within § 141.001(a)? [Tab 1]. Furthermore, if such additional requirements are not imposed on candidates, including an additional residency requirement, there is nothing to stop those who would seek to take advantage of a district and its constituents of which they know nothing about by moving into the district exactly one year before the election (essentially carpetbagging).[4]

Texas Constitution Article III, § 27 [Tab 6] provides an answer. This section states "Elections for Senators and Representatives shall be general throughout the State, and **shall be regulated by law**." Texas Constitution Article III, § 27 [Tab 6]. The Texas Legislature formulates laws related to and governing elections for the State of Texas, including Texas Election Code § 141.001 [Tab 1]. Respondent argues that the Constitution does not allow the Legislature to change or add any eligibility requirements other than those specifically set out in the Constitution. However, Relator argues that Article III, § 27 [Tab 6] does just that. In stating that elections for State Representatives are to be regulated by law, it would seem that

[4] Carpetbaggery is when a nonresident or new resident seeks private gain from an area by meddling in its business or politics. *See* "Carpetbagger," *Merriam-Webster.com Dictionary*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/carpetbagger (Accessed 6 Jan. 2022). [Tab 7].

Article III, § 27 [Tab 6] allows the Legislature to govern such elections with laws as it sees fit and in doing so, allows for further requirements to be imposed upon candidates for State Representative, including an additional six-month residency requirement.[5] Furthermore, Relator asserts that *Burroughs v. Lyles* supports the Legislature's ability to impose reasonable regulations on candidates as well. The Court in that case held that:

> Texas Constitution Article III, § 8 [Tab 8], of the Constitution provides that each house of the Legislature shall be the judge of the qualifications and election of its own members, but this does not prohibit the Legislature from enacting reasonable regulations to prevent those disqualified by law from placing their names on the ballot. The Legislature has the right to adopt all regulations reasonably necessary to avoid the futility of electing one who is not eligible to hold the office.

Burroughs v. Lyles, 181 S.W.2d 570, 575 (1944). As such, this would allow additional qualifications created by the Legislature, other than those imposed by the Constitution, to be applicable to candidates for State Representative, and would succeed in limiting access to candidacy to those who would seek to take advantage of districts and their constituents of which they know nothing about, due to their short-lived residency in such districts. One cannot adequately represent a district and its constituents if they have not lived there for even six months. For these reasons,

[5] *See also State ex rel. Edwards v. Reyna*, 333 S.W.2d 832, 833 (1960) (indicating that the conduct of elections is primarily a matter for legislative regulation and control and that Election Code was intended to apply to all candidates in all districts and election units).

Relator asserts that such additional requirements can be imposed on candidates by the Legislature, and Real Party in Interest, Claudia Ordaz-Perez ("**Ordaz-Perez**") is therefore ineligible for candidacy for State Representative for District 79, and Respondent erred in failing to declare her as such.

Finally, the Texas Constitution provides qualifications for a variety of elective public offices within its pages; however, it does not always indicate that the Legislature can prescribe the qualifications for or the fees of the office. For example, the office of county clerk is prescribed in the Constitution and such section indicates that the "duties, perquisites and fees of office shall be prescribed by the Legislature." Texas Constitution Article V., § 20 [Tab 9]. There is neither mention of the Legislature's ability to prescribe qualifications for this office, nor is there prescribed qualifications for the office within the Constitution itself. In contrast, the office of sheriff is similarly outlined in Texas Constitution Article V, § 23 [Tab 10]; this section indicates that the "duties, **qualifications**, perquisites, and fees of office, shall be prescribed by the Legislature." Texas Constitution Article V, § 23 [Tab 10]. This section permits the Legislature to prescribe the qualifications for the office of sheriff. In cases of offices such as the county clerk, where the Constitution prescribes no qualifications and does not specifically allow the Legislature to do so, what qualifications are imposed upon such candidates? If the qualifications for eligibility of Texas Election Code § 141.001 [Tab 1] cannot be imposed, how are qualifications

for office to be determined? Similarly, Texas Constitution Article V, § 7 [Tab 11], similarly prescribes qualifications for district judges, including residency requirements. Texas Constitution Article V, § 7 [Tab 11]. However, no limitations pertaining to exclusion of candidates pursuant to a final felony conviction or total or partial incapacity are provided for within this section. *Id* [Tab 11]. Neither does this section specify that additional qualifications may be prescribed by the Legislature. *Id.* [Tab 11]. If Respondent's line of argument is to be followed and Texas Election Code § 141.001 [Tab 11] is deemed to be inapplicable to these constitutionally prescribed qualifications for such a public elective office, is it then reasonable to assume that felons and those mentally incapacitated may sit and preside over district courts? It is illogical to believe that this is the case.

As such, Relator asserts that §§ 8 [Tab 8], and 27 [Tab 6] of the Texas Constitution grant the Legislature authority to prescribe qualifications by law, i.e., via the Texas Election Code, in addition to those qualifications already prescribed through the Constitution, for candidates for State Representative. As such, Real Party in Interest Ordaz-Perez is ineligible for candidacy for State Representative for District 79 for failing to meet the six-month in-district residency requirement. Respondent erred in failing to declare her ineligible, and Relator therefore requests that this Court grant his Petition for Writ of Mandamus and order Respondent to declare Ordaz-Perez ineligible for candidacy.

PRAYER

For these reasons, Relator, **PETER ARTHUR FIERRO a/k/a ART FIERRO** respectfully requests that the Court grant his Reply to **DORA OAXACA** and **CLAUDIA ORDAZ-PEREZ's** Response in Opposition to his Petition Writ of Mandamus, and for all other and further relief, both in law and in equity, to which he may show himself justly entitled.

Respectfully submitted,

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CERTIFICATION

Pursuant to Texas Rule of Appellate Procedure 52.3(j), I certify that I have reviewed this Reply to Dora Oaxaca and Claudia Ordaz-Perez' Response In Opposition to Relator's Petition for Writ of Mandamus and concluded that every factual statement herein is supported by competent evidence in the appendix or record.

/s/ Rene Ordoñez
RENE ORDOÑEZ

CERTIFICATE OF COMPLIANCE

This document complies with the type volume limitations of Tex. R. App. P. 9.4(i) it contains 2389 words, excluding the parts exempted by Tex. R. App. P. 9.4(i)(1).

/s/ Rene Ordoñez
RENE ORDOÑEZ

CERTIFICATE OF SERVICE

Undersigned counsel hereby acknowledges that, on January 7, 2022, a copy of the above Reply to Dora Oaxaca and Claudia Ordaz-Perez' Response In Opposition to Relator's Petition for Writ of Mandamus was served as indicated below, to:

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APPENDIX

TAB 1

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Election Code (Refs & Annos)
Title 9. Candidates (Refs & Annos)
Chapter 141. Candidacy for Public Office Generally (Refs & Annos)
Subchapter A. Eligibility for Public Office

V.T.C.A., Election Code § 141.001

§ 141.001. Eligibility Requirements for Public Office

Effective: January 1, 2020
Currentness

(a) To be eligible to be a candidate for, or elected or appointed to, a public elective office in this state, a person must:

(1) be a United States citizen;

(2) be 18 years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable;

(3) have not been determined by a final judgment of a court exercising probate jurisdiction to be:

(A) totally mentally incapacitated; or

(B) partially mentally incapacitated without the right to vote;

(4) have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities;

(5) have resided continuously in the state for 12 months and in the territory from which the office is elected for six months immediately preceding the following date:

(A) for a candidate whose name is to appear on a general primary election ballot, the date of the regular filing deadline for a candidate's application for a place on the ballot;

(B) for an independent candidate, the date of the regular filing deadline for a candidate's application for a place on the ballot;

(C) for a write-in candidate, the date of the election at which the candidate's name is written in;

(D) for a party nominee who is nominated by any method other than by primary election, the date the nomination is made; and

(E) for an appointee to an office, the date the appointment is made;

(6) on the date described by Subdivision (5), be registered to vote in the territory from which the office is elected; and

(7) satisfy any other eligibility requirements prescribed by law for the office.

(a-1) For purposes of satisfying the continuous residency requirement of Subsection (a)(5), a person who claims an intent to return to a residence after a temporary absence may establish that intent only if the person:

(1) has made a reasonable and substantive attempt to effectuate that intent; and

(2) has a legal right and the practical ability to return to the residence.

(a-2) Subsection (a-1) does not apply to a person displaced from the person's residence due to a declared local, state, or national disaster.

(a-3) The authority with whom an application for a place on a general primary election ballot is filed under Section 172.022 shall, to the extent permitted by law, use Subsections (a) and (a-1) in determining whether a candidate meets the residency requirements for a public elective office.

(b) A statute outside this code supersedes Subsection (a) to the extent of any conflict.

(c) Subsection (a) does not apply to an office for which the federal or state constitution or a statute outside this code prescribes exclusive eligibility requirements.

(d) Subsection (a)(6) does not apply to a member of the governing body of a district created under Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution.

Credits

Acts 1985, 69th Leg., ch. 211, § 1, eff. Jan. 1, 1986. Amended by Acts 2007, 80th Leg., ch. 614, § 28, eff. Sept. 1, 2007; Acts 2015, 84th Leg., ch. 504 (H.B. 484), § 1, eff. Sept. 1, 2015; Acts 2019, 86th Leg., ch. 1047 (H.B. 831), § 1, eff. Jan. 1, 2020.

Notes of Decisions (98)

V. T. C. A., Election Code § 141.001, TX ELECTION § 141.001

Current through the end of the 2021 Regular and Called Sessions of the 87th Legislature.

End of Document

TAB 2

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article XVI. General Provisions

Vernon's Ann.Texas Const. Art. 16, § 2

§ 2. Exclusions from office, jury service and right of suffrage; protection of right of suffrage

Effective: November 26, 2001
Currentness

Sec. 2. Laws shall be made to exclude from office persons who have been convicted of bribery, perjury, forgery, or other high crimes.

Credits
Amended Nov. 6, 2001, eff. Nov. 26, 2001.

Editors' Notes

INTERPRETIVE COMMENTARY

2018 Main Volume

This section is a verbatim copy of Art. 7, § 4 of the Constitution of 1845. The constitutional convention of 1845 recognized that Texas was a large area, and many sections thereof were relatively lawless. Furthermore, temptations were enormous, and the persons tempted often had no social position to forfeit, hence the conditions were not the most favorable to virtue.

It was admitted that although it was impossible to make men moral by statute, yet it was possible to arm good citizens with weapons which would improve their chances in the unceasing conflict with the various forms in which political dishonesty appeared. Therefore this section was placed in the first state constitution and carried over in all successive state constitutions.

Notes of Decisions (18)

Vernon's Ann. Texas Const. Art. 16, § 2, TX CONST Art. 16, § 2
Current through the end of the 2021 Regular and Called Sessions of the 87th Legislature.

End of Document

TAB 3

Constitution of the Republic of Texas

By: Joe E. Ericson (https://www.tshaonline.org/about/people/joe-ericson)
Type: General Entry
Published: 1952
Updated: February 25, 2016

CONSTITUTION OF THE REPUBLIC OF TEXAS. The Constitution of the Republic of Texas (1836), the first Anglo-American constitution to govern Texas, was drafted by a convention of fifty-nine delegates who assembled at Washington-on-the-Brazos on March 1, 1836 (*see* **CONVENTION OF 1836 (/handbook/online/articles/mjc12)**). A constitution was adopted by the convention fifteen days later and ratified by a vote of the people of the republic on the first Monday in September 1836.

The ever-present threat of attack by Mexican cavalry tended to stifle originality in the document. Almost of necessity the haste to complete their task led delegates to lift portions from the Constitution of the United States and from several contemporary state constitutions. The use of such models produced a document embodying some familiar features. Like the United States Constitution it was admirably brief (less than 6,500 words) and contained generous grants of power to state officials, especially the chief executive. Furthermore, great numbers of specific limitations and restrictions upon government often found in state constitutions of the time were avoided. Finally, the well-known words and phrases of older American constitutions were preserved, making understanding easier.

Typical American features included a short preamble; separation of the powers of government into three branches-legislative, executive, and judicial; checks and balances; **slavery (/handbook/online/articles/yps01)** ; citizenship, with "Africans, the descendents of Africans, and Indians excepted"; a Bill of Rights; male suffrage; and method of amendment. The legislature was bicameral, the two houses being the Senate and the House of Representatives (*see* **CONGRESS OF THE REPUBLIC OF TEXAS (/handbook/online/articles/mkc01)**). The executive resembled the American presidency, and the four-tiered judiciary system comprised justice, county, district, and supreme courts, of which the district courts were the most important.

Some of the constitution's atypical provisions undoubtedly reflected Jacksonian ideas current in the states from which many delegates had come; fourteen, for example, came from Tennessee. Ministers and priests were declared ineligible to hold public office. Imprisonment for debt was abolished, and monopolies, primogeniture, and entailment were prohibited. Terms of office were short, ranging from one year for representatives to four years for some judges. Annual elections were required.

Among the most important provisions adapted from Spanish-Mexican law were community property, homestead exemptions and protections, and debtor relief. Contrary to common-law practice in the American states, Texas courts were not separated into distinct courts of law and equity.

The amending process was so complex that, although in the ten-year life span of the constitution several amendments were suggested, none was ever adopted. Amendments could be proposed in one session of Congress, referred to the next session for a second approval, and then submitted to a popular vote.

Of nearly paramount importance at the time of adoption were provisions relating to land. The document sought in many ways to protect the rights of people in the unoccupied lands of the republic, lands that were the main attraction to the immigrants who had come to Texas. In its "Schedule," for example, the

constitution affirmed "that all laws now in force in Texas...shall remain in full force." Later, in the "General Provisions," a citizen who had not received his land grant was guaranteed "one league and one labor of land" if the head of a family; single men over seventeen years were assured of "the third part of one league of land"; and orphan children "whose parents were entitled to land" were declared eligible for all property rights of their deceased parents. The constitution also sought to void all "unjust and fraudulent claims." Preference of the predominantly Anglo-American settlers for the legal system they had known "back in the states" is apparent in a provision that called for the introduction of the common law of England as early as practicable and declared it the rule to be used in deciding all criminal cases. Although the constitution of 1836 was a revolutionary document written and adopted in haste, it was a product of the social and economic conditions of the time as well as of the constitutional and legal heritage of Texas, the southern and western states, and the United States. Therefore, Anglo-Americans immigrating to the **Republic of Texas (/handbook/online/articles/mzr02)** found institutions of law and government in accord with their experience. *See also* **LAW (/handbook/online/articles/jzlph)** .

George D. Braden, ed., *The Constitution of the State of Texas: An Annotated and Comparative Analysis* (2 vols., Austin: Advisory Commission on Intergovernmental Relations, 1977). Hans Peter Nielsen Gammel, comp., *Laws of Texas, 1822–1897* (10 vols., Austin: Gammel, 1898). John Sayles, *The Constitutions of the State of Texas* (2d ed., St. Louis: Gilbert, 1884; 4th ed., St. Paul, Minnesota: West, 1893). Rupert N. Richardson, "Framing the Constitution of the Republic of Texas," *Southwestern Historical Quarterly* 31 (January 1928).

Time Periods:

- Texas Revolution
- Republic of Texas

Original Publication Date:
1952

Most Recent Revision Date:
February 25, 2016

TAB 4

What Are High Crimes and Misdemeanors? Here’s the History

BY **MADELEINE CARLISLE**

UPDATED: JANUARY 17, 2020 9:22 AM ET | ORIGINALLY PUBLISHED: DECEMBER 10, 2019 6:43 PM EST

On Wednesday evening, President Donald Trump became the third President in American history to be impeached. The House of Representatives voted in favor of two articles of impeachment — accusations of abusing the power of his office and obstructing Congress's investigation into his relationship with Ukraine — that Democrats argue fall under the umbrella of "high crimes and misdemeanors."

Now that the House has impeached the President, the issue goes to the Senate, who will vote on whether to convict and remove the President from office in 2020.

According to the U.S. Constitution, a President can be impeached for committing "Treason, Bribery, or other high Crimes and Misdemeanors." Treason and bribery are relatively clear, but what exactly are "high crimes and misdemeanors"? The answer, it turns out, is complicated, and has been evolving for hundreds of years.

Here's what to know about the history of high crimes and misdemeanors.

What are high crimes and misdemeanors?

The phrase "high crimes and misdemeanors" appears in Article II section 4 of the U.S. Constitution:

> The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

While he was in Congress, before becoming President through a different series of unusual Constitutional processes, Gerald Ford offered a famously cheeky explication of that sentence: "An impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history." But most legal scholars disagree.

"I think that's a little glib," says Tom Ginsburg, a law professor at the University of Chicago Law School. "There's an element of it which its true, but there is some content to the standard. Congress isn't just making things up. There's a consistent set of precedents now."

There are currently two major legal disputes over the definition of "high crimes and misdemeanors." The first is whether or not something in that category actually has to be a crime. Frank Bowman, a law professor at the University of Missouri School of Law and the author of *High Crimes & Misdemeanors: A History of Impeachment for the Age of Trump*, tells TIME he believes it doesn't. "The defenders of the impeached officer always argue, always, that a crime is required," he says. "And every time that misconception has to be knocked down again."

He offers this example: "Let's say the President were to wake up tomorrow morning and says, 'All this impeachment stuff is kind of getting on my nerves. I think I'm going to go to Barbados for six months. Don't call me, I'll call you,' and just cuts off all contact and refuses to do his duty," Bowman theorizes. "That's not a crime. It's not violating a law. But could we impeach him? Of course we could — otherwise what's the remedy? We have a country without a President."

The second legal dispute is over whether *all* crimes are impeachable: If a President broke a law but it didn't relate to his or her office, can that person still be impeached? This question came up prominently during the impeachment of President Bill Clinton, whom a judge determined to have lied under oath.

To understand the answer to both questions, constitutional scholars recommend we look to history.

What's the Constitutional history of the term?

The concept of impeachment was used by the British Parliament as early as 1376, as a legislative safeguard against overreach by the aristocracy, and the

terms in question were part of the process early on.

"In England a lot of the impeachment cases had relied on this language of 'high crimes and misdemeanors' from the 1640s onward," Bernadette Meyler, a law professor at Stanford Law School, explains.

But the phrase didn't have a set definition in British practice; it was used to describe whatever thing the person was being impeached for, according to Bowman. There were several things for which people were impeached during this era: ordinary crimes, treason, corruption, abuse of power, ordinary incompetence and misbehavior in relation to foreign policy. Notably, the King could not be impeached.

When the framers of the U.S. Constitution realized they needed a way to remove executive officials who abused the nature of their positions, they decided to add a definition for an impeachable offense. Though many suggestions were made at the Constitutional Convention in 1787, by the end of the summer they'd winnowed it down to two examples: treason and bribery.

But George Mason of Virginia took issue with limiting it to the two definitions, arguing they were too narrow. At the same time the Constitution was being drafted, newspapers were covering the impeachment of a statesman named Warren Hastings for misconduct during his time the Governor General of India. Mason pointed out that under their current definition, Hasting wouldn't be impeachable. Mason suggest they broaden the definition to include "maladministration," meaning mismanagement or ineffective governance. James Madison argued back that the word would be too broad, and make it so the President would be serving at the "pleasure of the Senate." He worried Senators could remove the President if they disliked a policy move.

George Mason then proposed including the phrase "high crimes and misdemeanors" instead, and that's the term they settled on.

To understand what the framers thought "high crimes and misdemeanors" meant, Harvard Law professor Jennifer Taub points to Alexander Hamilton's

Federalist Paper No. 65, in which he explains the impeachment process. "The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust," Hamilton wrote in 1788.

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How has 'high crimes and misdemeanors' been used throughout American history?

The very first federal official to face impeachment was a Senator from Tennessee named William Blount. Blount had conspired to help the British conquer the Spanish-controlled territory of West Florida; the House of Representatives impeached him once he was discovered, but the Senate expelled him instead of voting on to convict him. This move by the Senate set a precedent that members of Congress aren't impeachable under the Constitution — only federal judges and executive branch officials.

The first person who was successfully impeached and removed was federal judge named John Pickering in 1803. He was impeached because, as the University of Missouri's Bowman says, "He was both an alcoholic and probably insane." Bowman points out that neither was a crime, but led him to abuse his office.

Only 19 people were impeached in the U.S. from 1788 until Trump: Two Presidents, one Senator, one Secretary of War and 15 federal judges.

"These tend to be things about a violation of public trust, acting for personal gain and obstructing the process of impeachment itself," explains Tom Ginsburg.

For an exhaustive history of impeachment, Kermit Roosevelt, a law professor at the University Pennsylvania Law School, points to the 1974 House Judiciary Committee report on the "Constitutional Grounds for Presidential

Impeachment," which was released amid the inquiry into former President Richard Nixon. The report examined the long history of impeachment — tracing it back to Britain — and concluded that "The framers understood quite clearly that the constitutional system they were creating must include some ultimate check on the conduct of the executive, particularly as they came to reject the suggested plural executive."

One of the most important precedents the report looked at was the very first presidential impeachment.

President Andrew Johnson's impeachment

Andrew Johnson was the first U.S. President to be impeached. Nine of the eleven articles of impeachment against him related to violating the Tenure of Office Act but, Bowman says, "The real reason was a deep disagreement between the President and Congress about reconstruction after the Civil War."

Johnson became President after President Abraham Lincoln was assassinated. He was a unionist but also a Southern Democrat who was fine with a swift reconciliation with the South, without much social reform or protection for freed slaves. The Republican-controlled Congress deeply disagreed, and worried that Johnson was firing cabinet officials from the Lincoln Administration to replace them with officials more partial to his vision of Reconstruction. The Republicans promptly passed the Tenure of Office Act, which barred the President from firing certain executive branch officials without senatorial approval. It explicitly made the offense a "high misdemeanor." "That was not an accident," says Frank Bowman.

In 1868, after Johnson fired the Secretary of War, Edwin Stanton, the House of Representatives promptly impeached him. The case went to the Senate, where he came one vote away from being convicted and removed.

President Richard Nixon's resignation

In 1974, President Richard Nixon faced impeachment charges of "high crimes and misdemeanors" after it was revealed that he used his law enforcement power to cover up a burglary of the headquarters his political opponent.

"That's not treason and it's not bribery, but it is a corrupt use of the powers of office in a way that undermines the constitutional system," Richard Primus, a professor of law at the University of Michigan Law School, explains.

Three articles were approved by the Judiciary Committee but Nixon resigned before the House took the full vote. But, as Bowman explains, scholars still tend to treat the articles of impeachment brought against him as important precedent. He was charged with obstruction of justice, abuse of power and contempt of Congress. While Nixon did commit crimes, Bowman adds, none of the articles were framed in relation to the specific criminal statutes he broke. They are all framed in terms of the President's violation of his oath of office.

President Bill Clinton's impeachment

President Bill Clinton was impeached in 1998 on two counts of "high crimes and misdemeanors": lying under oath and obstruction of justice. The charges emerged after Clinton denied having had a sexual relationship with White House intern Monica Lewinsky in the course of a civil sexual harassment lawsuit against against Clinton by Paula Jones.

Stanford's Meyler explains that the Clinton impeachment caused debate among scholars because "some people felt that, look, there's a crime, but not every crime rises to the level of an impeachable offense. This wasn't something that really pertained to the office, and so therefore it didn't rise to the level of an impeachable offense." But others argued that since a crime was clearly committed, that was enough for impeachment.

The Senate acquitted Clinton.

How has the meaning of 'high crimes and misdemeanors' changed over the years?

Unlike other parts of the Constitution, there's no opportunity for the Supreme Court to interpret "high crimes and misdemeanors" and give a concrete definition. In the opinion of Erwin Chemerinsky, the Dean of the University of California Berkeley School of Law, that leaves Americans to look to how it's been used over history. "I'd say the one thing that is shown by past practice is, it doesn't have to be a crime," he says. "It's about a serious abuse of power."

Chemerinsky argues that President Trump's impeachment is similar to Clinton's in that there isn't much confusion as to what happened, but there is a great deal of disagreement about how to think about those events. The President's own summary of his phone call shows him asking for "a favor" from the President of Ukraine, and Trump's Chief of Staff Mick Mulvaney later said that it was a quid pro quo and told people to "get over it." The question that remains, he believes, is whether what happens constitutes "high crimes and misdemeanors."

Others feel differently. George Washington University Law School professor Jonathan Turley, who was called to testify about the definition of impeachable offenses by Republicans on the Judiciary Committee, testified that "the use of military aid for a quid pro quo to investigate one's political opponent, if proven, can be an impeachable offense," but that there is not enough evidence to prove President Trump did so.

Such disagreement is not surprising, but Chemerinsky urges observers not to panic over the discord around impeachment in Washington.

"The framers of the Constitution knew that ultimately this would be a political process," he says. "And so none of us should be shocked or upset that it's a political process today."

Correction, Jan. 15

The original version of this story misstated that President Nixon ordered the burglary of the Democratic National Committee's offices. It is still unclear if Nixon ordered or knew about the break-in before it occurred.

TAB 5

high crime

noun

Saved!

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Log In

Legal Definition of *high crime*

: a crime of infamous nature contrary to public morality but not technically constituting a felony specifically **:** an offense that the U.S. Senate deems to constitute an adequate ground for removal of the president, vice president, or any civil officer as a person unfit to hold public office and deserving of impeachment

TAB 6

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article III. Legislative Department

Vernon's Ann.Texas Const. Art. 3, § 27

§ 27. Elections

Currentness

Sec. 27. Elections for Senators and Representatives shall be general throughout the State, and shall be regulated by law.

Editors' Notes

INTERPRETIVE COMMENTARY

2007 Main Volume

This section is a readoption word for word of provisions in all of the earlier Constitutions of the State of Texas.

It simply means that an election for state purposes to be general must be state-wide. It is one held for the election of officers throughout the state, open to all of the qualified electors as distinguished from any special class. It gives to every qualified voter throughout the state the opportunity to register his approval or disapproval.

Notes of Decisions (2)

Vernon's Ann. Texas Const. Art. 3, § 27, TX CONST Art. 3, § 27
Current through the end of the 2021 Regular and Called Sessions of the 87th Legislature.

End of Document

TAB 7

carpetbagger

noun

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car·pet·bag·ger | \ ˈkär-pət-ˌba-gər \
plural carpetbaggers

Definition of *carpetbagger*

1 disapproving **:** a Northerner in the South after the American Civil War usually seeking private gain under the Reconstruction governments
2 disapproving **:** outsider especially **:** a nonresident or new resident who seeks private gain from an area often by meddling in its business or politics

TAB 8

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article III. Legislative Department

Vernon's Ann.Texas Const. Art. 3, § 8

§ 8. Each House judge of qualifications and election; contests

Currentness

Sec. 8. Each House shall be the judge of the qualifications and election of its own members; but contested elections shall be determined in such manner as shall be provided by law.

Editors' Notes

INTERPRETIVE COMMENTARY

2007 Main Volume

A provision similar to this was placed in the Constitution of the Republic of Texas, and, since the Constitution of 1845, it has been incorporated into the succeeding constitutions in substantially the same terminology.

It is a general principle of constitutional law that every legislative assembly possesses the power of canvassing the election of its members and judging their qualifications. This principle is incorporated into the United States Constitution and here in the Texas Constitution.

The power delegated to the House of Representatives and the Senate under this provision is a judicial power. When each house exerts this power it acts in a judicial manner from which there is no appeal, not even to the two houses. The object of such a provision is to preserve the integrity and efficiency of membership, to discourage fraudulent elections, and to maintain the independence of each house.

Each house is the sole judge of the qualifications and elections of its members. Hence, except in cases of contested elections which, under the constitution, shall be determined in a manner provided by law, the courts do not have jurisdiction to pass upon the qualifications of a member of the state legislature, either in law or fact. The jurisdiction of the legislature with respect thereto cannot be controlled by any other authority. See Henderson v. Democratic Executive Committee of Falls County, Civ.App., 164 S.W.2d 192 (1942); and see 49 Am.Jur. § 34.

Notes of Decisions (9)

Vernon's Ann. Texas Const. Art. 3, § 8, TX CONST Art. 3, § 8
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TAB 9

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article V. Judicial Department

Vernon's Ann.Texas Const. Art. 5, § 20

§ 20. County clerk

Currentness

Sec. 20. There shall be elected for each county, by the qualified voters, a County Clerk, who shall hold his office for four years, who shall be clerk of the County and Commissioners Courts and recorder of the county, whose duties, perquisites and fees of office shall be prescribed by the Legislature, and a vacancy in whose office shall be filled by the Commissioners Court, until the next general election; provided, that in counties having a population of less than 8,000 persons there may be an election of a single Clerk, who shall perform the duties of District and County Clerks.

Credits
Amended Nov. 2, 1954.

Editors' Notes

INTERPRETIVE COMMENTARY

2007 Main Volume

The word clerk is derived from the Latin *clericus* meaning clergyman, and its application to a particular officer of a court had its origin in the historical fact that in the early days of England, both before and after the Norman Conquest, the subordinate officers of courts of justice, as well as the judges, were chosen from the clergy, the clergy being the only educated class in England.

In England the "clerk of the peace", a county officer appointed by the keeper of the rolls of the county, was clerk of the court of general sessions of the peace; while the clerks of the courts, known as county courts, which were presided over by sheriffs, were appointed by the sheriffs and were sometimes known as county clerks.

In the colonies, the establishment of courts of justice with the appointment of the judges and subordinate officers was a prerogative of the crown. These courts of common pleas were known as county courts, and the clerks thereof acquired the name of county clerks. They were also the clerks of the general sessions of the peace and registers of deeds in their respective counties.

In Texas, the clerk of the county court is usually called the county clerk. He was elected biennially prior to the 1954 amendment. The office has been in existence since 1836, superseding the *escribano* of Spanish-Mexican rule. (See, Art. 5, Sec. 18.)

The main duties of the county clerk are to serve as clerk of the county court and the county commissioners court; act as recorder of deeds and other instruments; issue marriage licenses, and take depositions. In counties of less than 8,000 population, he may also serve as clerk of the district court.

In November, 1954, this section was amended increasing the term of office of the County Clerk from two to four years.

Notes of Decisions (17)

Vernon's Ann. Texas Const. Art. 5, § 20, TX CONST Art. 5, § 20
Current through the end of the 2021 Regular and Called Sessions of the 87th Legislature.

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TAB 10

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article V. Judicial Department

Vernon's Ann.Texas Const. Art. 5, § 23

§ 23. Sheriffs

Currentness

Sec. 23. There shall be elected by the qualified voters of each county a Sheriff, who shall hold his office for the term of four years, whose duties, qualifications, perquisites, and fees of office, shall be prescribed by the Legislature, and vacancies in whose office shall be filled by the Commissioners Court until the next general election.

Credits
Amended Nov. 2, 1954; Nov. 2, 1993.

Editors' Notes

INTERPRETIVE COMMENTARY

2007 Main Volume

The office of sheriff is a very ancient one. The origin of the office can be found in the institution of the king's reeves who watched over royal interests in the towns of the ninth century. By the end of that century, the king's reeve acquired judicial as well as financial functions; and early in the tenth century, he became a shire instead of a town official and was called the shire-reeve.

By the end of the Anglo-Saxon period, he had supplanted the ealdorman as the effective head of the shire, and, soon after the Norman Conquest, his powers touched their zenith. The financial, judicial and administrative importance of the office, added to the personal influence of the great landowners who normally filled it, constituted a serious menace to the crown as well as an unending source of oppression to the crown's subjects.

A long struggle, covering a span of many centuries, took place in which various measures were employed to curb the powers of the sheriff, and to establish the principle that the sheriff was but a servant of the crown and not an independent magnate.

Among the most ancient duties of the sheriff is that of conserving the peace and suppressing disorder with the help of the *posse comitatus*. Until the development of the office of lord lieutenant in the 16th century, he was also the head of the military forces of the shire. His duty of receiving writs, summoning juries, and executing judgments is as old as the common law itself, and remains the most important part of his work.

The office of sheriff was introduced into America as part of the county organization. In New England, this was a slow development, for local government centered for the most part in towns. Further south, however, where larger units of local government became the rule, the sheriff rapidly became the leader of his county. Appointment was generally by the governor, but as early as 1705 the office became elective in Pennsylvania, and other states soon adopted this procedure for filling the office.

The constitution prior to 1954 provided that a sheriff shall be elected biennially in each county. In November, 1954, this section was amended increasing the term of office of Sheriffs from two to four years. The office has been provided for under every Texas constitution and supersedes the *alguacil* of Spanish and Mexican rule. (See Art. 5, Sec. 18)

The main duties of the sheriff are to act as a conservator of the peace and the executive officer of the county and district courts; serve writs and processes of the courts; and supervise the jail and all prisoners. In counties of less than 10,000 population he is also *ex officio* tax assessor and collector.

Notes of Decisions (16)

Vernon's Ann. Texas Const. Art. 5, § 23, TX CONST Art. 5, § 23
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TAB 11

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article V. Judicial Department

Vernon's Ann.Texas Const. Art. 5, § 7

§ 7. Judicial Districts; District Judges; terms or sessions; absence, disability or disqualification of Judge

Effective: January 1, 2022
Currentness

Sec. 7. (a) The State shall be divided into judicial districts, with each district having one or more Judges as may be provided by law or by this Constitution.

(b) Each district judge shall be elected by the qualified voters at a General Election. To be eligible for appointment or election as a district judge, a person must:

(1) be a citizen of the United States and a resident of this State;

(2) be licensed to practice law in this State;

(3) have been a practicing lawyer or a Judge of a Court in this State, or both combined, for eight years next preceding the judge's election, during which time the judge's license to practice law has not been revoked, suspended, or subject to a probated suspension;

(4) have resided in the district in which the judge was elected for two years next preceding the election; and

(5) reside in the district during the judge's term of office.

(c) A district judge shall hold the office for the term of four years and shall receive for the judge's services an annual salary to be fixed by the Legislature.

(d) A District Court shall conduct its proceedings at the county seat of the county in which the case is pending, except as otherwise provided by law. The Court shall hold the regular terms at the County Seat of each County in the Court's district in such manner as may be prescribed by law. The Legislature shall have power by General or Special Laws to make such provisions concerning the terms or sessions of each District Court as it may deem necessary.

(e) The Legislature shall also provide for the holding of District Court when the Judge thereof is absent, or is from any cause disabled or disqualified from presiding.

Credits

Amended Aug. 11, 1891; Nov. 8, 1949; Nov. 5, 1985; Nov. 2, 2021, eff. Jan. 1, 2022.

Editors' Notes

INTERPRETIVE COMMENTARY

2007 Main Volume

The chief trial courts in Texas, the great *nisi prius* courts, are the district courts. They had their origin in the Constitution of the Republic, which provided for not less than three nor more than eight district courts, judges of which were to be elected by a joint ballot of both houses of congress for four year terms.

The Constitution of 1845 raised the term of office to six years and that of 1866 to eight. The term was reduced by the Constitution of 1876 to four years, and this latter term has been continued in subsequent amendments.

In all of the constitutions of the state, the district judges have been elected by the qualified voters, except that of 1845 and 1861 which provided for appointment of such judges by the governor with the concurrence of the senate, although it may be noted that an amendment of 1850 changed the method provided in 1845 to election by the people.

Under all the constitutions it has been provided that the district courts are to be held by district judges chosen from defined districts. The number of judicial districts was limited by the Constitution of the Republic to not more than eight, but since that time the number has been subject to the will of the legislature, and the number has been increased; and consequently the number of district judges, with the growth of the state, has also increased.

The Constitution of 1876 prescribed qualifications of district judges as at least twenty-five years of age, a citizen of the United States, a practicing attorney or judge of a court in the state for the period of four years, and a resident of the district in which he is elected for two years next before his election. It was further provided that he should reside in his district during his term of office.

These qualifications were substantially unchanged by the amendment of 1891, although the addition that a judge should be a citizen of the state was made.

The amendment of 1949 made further slight changes requiring a district judge to be licensed to practice law in the state, and required him to have been a practicing lawyer or a judge of a court in the state or both combined for four years next preceding his election.

The court requires that the district courts hold their sessions at the county seat. A requirement that a court should exercise its judicial functions at a fixed location is traditional. Magna Carta stipulated that the court of common pleas should be held at a fixed location.

The district court is to conduct its proceedings “at the county seat of the county in which the case is pending, except as otherwise provided by law.” The exception clause was added by constitutional amendment in 1949, and was placed in the constitution to permit the legislature to confer greater flexibility in cases pending in districts embracing two or more counties. In the absence of this legislative authorization, a trial conducted by a district judge and a judgment rendered in a county of his district other than that in which the action is pending, without a formal change of venue, has been held void even when the parties impliedly agreed. See Isbill v. Stovall, Civ.App., 92 S.W.2d 1067 (1936).

According to the constitution the judge of each district court "shall hold the regular terms of his court at the County Seat of each County in his district at least twice in each year, in such manner as may be prescribed by law." This provision entitles each county in the state to at least two terms of its district court in each calendar year. Edgar v. State, 96 Cr.R. 1, 255 S.W. 748 (1923). This does not mean that there may not be a valid provision made for more than two terms of the district court, but merely that there must be at least two. Lemmons v. State, 59 Cr.R. 299, 128 S.W. 416 (1910). In this connection, the Constitution of 1869 required court to be held three times a year in each county.

Section 7 delegates to the legislature the power to make such provisions concerning terms or sessions of each court as may be necessary. Hence, if the constitutional minimum is met, the legislature may change the period for the terms as it wishes. It has made the terms of most district courts continuous.

Prior to the Constitution of 1876, no special term of the district court could be held or called. Mayhew v. State, 69 Cr.R. 187, 155 S.W. 191 (1913). Thus, there was no way to avoid the restrictions imposed upon the district judge by the provisions of rigid and non-continuous terms. The Constitution of 1876 and the amendment of 1891 authorized the legislature to permit the holding of special terms or the holding of more than two terms in any county. The amendment of 1949, as noted above, simply grants broadly authorization to the legislature to make provisions concerning the terms and sessions of each court as it may deem necessary.

So that absence, disability or disqualification of the judge during the session of the court will not operate to adjourn the court or prevent the holding of the court, the constitution authorizes the legislature to provide for the holding of district court when the judge is absent, or is for any cause disabled or disqualified from presiding.

Notes of Decisions (71)

LEGISLATIVE NOTES

The proposed constitutional amendment to §7 by S.J.R. 47, §2, will be voted on during the Nov. 2, 2021, general election. If approved by the voters, the amendment will become effective on Jan. 1, 2022. The proposed amendment applies only to a district judge who is first elected for a term that begins on or after Jan. 1, 2025, or who is appointed on or after that date.

Vernon's Ann. Texas Const. Art. 5, § 7, TX CONST Art. 5, § 7
Current through the end of the 2021 Regular and Called Sessions of the 87th Legislature.

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